

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA

BRANDON HEARNS,

Plaintiff,

v.

Civil Action No. 1:05cv151
(Judge Keeley)

JIM RUBENSTEIN, Commissioner,
WILLIAM HAINES, Warden,
TOM WRATCHFORD, Correctional Officer,
WEST VIRGINIA DIVISION OF CORRECTIONS,
NATIONAL UNION FIRE INSURANCE
COMPANY OF PENNSYLVANIA,

Defendants.

ORDER ADOPTING REPORT AND RECOMMENDATION

On November 18, 2005, pro se plaintiff, Brandon Hearn ("Hearn"), filed his complaint pursuant to 42 U.S.C. §1983 and the Federal Tort Claims Act ("FTCA"). On July 27, 2006, he filed an amended complaint in which he alleged that the Department of Corrections ("DOC") defendants and their officers, agents, assistants and employees individually and collectively (1) were grossly negligent and deliberately indifferent to his safety and well being in violation of the Eighth Amendment, and (2) had failed to provide him with adequate follow-up medical treatment, which resulted in permanent brain and eye damage.

On August 22, 2006, Magistrate Judge James E. Seibert recommended the dismissal of Hearn's claims under the FTCA, and also recommended that the Clerk of Court serve the amended

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complaint with regard to the remaining claims. On November 3, 2006, this Court adopted the R&R, dismissed Hearn's FTCA claims and directed the Clerk to serve the amended complaint on the defendants.

Thereafter, on July 10, 2007, Magistrate Judge Seibert recommended that the defendant, National Union Fire Insurance Company, be dismissed and that Hearn's Eighth Amendment claims against the DOC defendants proceed. This Court adopted Magistrate Judge Seibert's recommendation on August 2, 2007, dismissed defendant National Union Fire Insurance Company, and set a hearing to establish a schedule for the case.

Finally, on February 5, 2009, Magistrate Judge Seibert issued a Report and Recommendation ("R&R") recommending that the Court grant the Motion for Summary Judgment (dkt. no. 77) filed by the remaining defendants, Jim Rubenstein, Williams Haines, and the West Virginia Division of Corrections, and dismiss Hearn's amended complaint for failure to state a claim upon which relief can be granted. On the same day, the Clerk of Court mailed a copy of the R&R to Hearn, by certified mail, return receipt requested, at the current address on file.

The February 5, 2009 R&R specifically warned Hearn that his failure to file "written objections identifying the portions of the

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recommendation to which objections are being made, and the basis for such objections" would result in a waiver of his right to appeal from a judgment of this Court based on the recommendation. On February 17, 2009, the United States Post Office returned the mail containing the R&R to the Court marked "Undeliverable."

The docket sheet in this case reflects that, on November 18, 2005, the Clerk of Court forwarded the "General Guidelines for Appearing Pro se in Federal Court" to Hearn. Nor is there any indication on that docket sheet that the United States Postal Service returned these General Guidelines as undeliverable. Page one of the General Guidelines directs that:

Current Address: Keep the Court and opposing counsel, if any, advised of your most current address **at all times**. Failure to do so may result in your action being dismissed without prejudice

Moreover, during the pendency of this matter Hearn has notified the Court of two changes of address: the first time on August 21, 2006, and the second time on January 28, 2008.

Accordingly, because Hearn was aware of his obligation to notify the Court of any subsequent change of address and has failed to do so, and given that the time for the filing of objections has passed, the Court **ADOPTS** Magistrate Judge Siebert's R&R in its entirety (dkt. no. 88), **GRANTS** the defendants Motion for Summary

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Judgment (dkt. no. 77), **DISMISSES** this case **WITH PREJUDICE**, and **DIRECTS** that the Clerk strike it from the Court's docket.

It is so **ORDERED**.

The Court also directs the Clerk of Court to mail a copy of this Order to the pro se petitioner, certified mail, return receipt requested at his most current address, and to transmit copies of this Order to counsel of record.

Dated: February 24, 2009

/s/ Irene M. Keeley
IRENE M. KEELEY
UNITED STATES DISTRICT JUDGE